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No._____

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1984

WILLIAM B. ROBINSON, (former) Commissioner of the Bureau of Correction; JAMES HOWARD, (former) Superintendent of the State Correctional Institution at Pittsburgh; ROBERT MARONEY, Deputy Superintendent for Treatment at the State Correctional Institution at Pittsburgh; CHARLES ZIMMERMAN, (former) Deputy Superintendent for Treatment at the State Correctional Institution at Pittsburgh; JAMES A. WIGTON, Classification and Treatment Supervisor at the State Correctional Institution at Pittsburgh, et al.,

Petitioners

V.

STANTON STORY, GEORGE BROOKS, ROBERT JOYNER, LOUIS McLEMORE, LARRY HOWARD,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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130 pp

QUESTIONS PRESENTED FOR REVIEW

I. Whether a federal court, consistent with the provisions of 42 U.S.C. § 1983 and principles of federalism, may enjoin state officials to conform their conduct to state regulations when the court did not find a violation of the Constitution or federal statute to support its decision?

II. Whether the district court's failure to conduct a review de novo of the record compiled before the magistrate, as required by federal statute, requires reversal of the district court's judgment, particularly where objections to the magistrate's report raised questions of sufficiency of the evidence to support the magistrate's conclusions?

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OPINIONS BELOW

The Court of Appeals did not issue an opinion below. The Court's judgment orders are reproduced in the Appendix, pp. 1a-4a. The opinion of the United States District Court for the Western District of Pennsylvania is not reported but appears in the Appendix, pp. 5a-109a.

STATEMENT OF JURISDICTION

The decision of the Court of Appeals was issued on April 18, 1984. This petition for writ of certiorari has been filed within ninety days of that date. Jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Eighth Amendment to the Constitution of the United States provides as follows:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. amend. VIII.

STATUTES INVOLVED

The United States Magistrates Act, 28 U.S.C. §§ 631 et seq., provides, in pertinent part, as follows:

> Notwithstanding any provision of law to the contrary --
> * * *
> a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court . . . of prisoner petitions challenging conditions of confinement . . . .
>
> Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations

as provided by rules of court. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made . . . .

28 U.S.C. § 636(b)(1).

The Civil Rights Act of 1871 provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

STATEMENT OF THE CASE

This is a civil action for damages brought pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983, by inmates of a state prison. The inmates brought suit challenging conditions of confinement in one cellblock at the State Correctional Institution at Pittsburgh, Pennsylvania, as well as certain incidents of treatment at the prison which were personal to them. Named as defendants were various employees of the Commonwealth of Pennsylvania's Bureau of Correction.

The United States District Court for the Western District of Pennsylvania assigned the matter to a United States Magistrate who, after ten days of hearings, issued a summary of testimony, a report and recommendation, and proposed findings of fact and conclusions of law. The magistrate

recommended: 1) that judgment be entered in favor of the corrections officials on all issues except the claims regarding strip searches and exercise and that nominal damages be awarded the inmates on these claims; 2) that within 30 days the corrections officials provide acceptable certification that the lighting in certain cells meets standards set by the state health department; 3) that prison ventilation conform with state environmental agency requirements; 4) that food service to the inmates conform with Bureau of Correction standards; and 5) that laundry service to the inmates be similar to that provided other inmates in the prison. (15a).

By memorandum opinion and order dated March 3, 1983, the district court adopted the recommendations of the magistrate with certain modifications

and directed remedial action from the prison officials in several respects. (12a). In particular, the court ordered: 1) that the practice of double strip searches be abandoned; 2) that the inmates' out-of-cell exercise time be increased; 3) that the corrections officials provide within 30 days acceptable certification that the lighting in certain cells meets standards set by the state health department; 4) that prison ventilation conform with state environmental agency standards; 5) that food service be brought into conformity with state standards; 6) that laundry service to the inmates be similar to that provided other inmates in the prison; and 7) that nominal damages be awarded to the inmates. (13a).

Cross-appeals were taken by the parties to the Court of Appeals for the

Third Circuit. The corrections officials argued to the court that it was error for the district court to have ordered remedial relief from state officials under the civil rights act when the court did not find an underlying violation of the Constitution. In addition, they argued that it was error for the district court to have found the officials liable when it failed to conduct a review de novo of the record before the magistrate in accordance with the United States Magistrates Act, 28 U.S.C. §§ 631 et seq.

On April 18, 1984, the Court of Appeals issued two judgment orders affirming the decision of the district court without opinion.

REASONS FOR GRANTING THE WRIT

1. The Decision Below Conflicts with Decisions of this Court and Involves an Important Question of Federal Law Regarding the Propriety of a Federal Court

Directing State Officials to Conform their Conduct to State Regulations in the Absence of any Violation of Federal Law.

The district court, at paragraphs 3-6 of its final order (14a), directed remedial action from the state officials in the areas of prison lighting, ventilation, food service and laundry service. The court, in essence, mandated that the officials conform their management of the state prison to regulations adopted by the state bureau of corrections as well as the state departments of health and environmental resources. (14a). The magistrate, however, whose findings were adopted by the district court, found in his report that the lighting, ventilation, food service, or laundry service at the prison did not amount to cruel and unusual punishment and did not otherwise

violate the Constitution.[1]

The district court adopted these findings in toto, but nevertheless, proceeded to direct the prison officials to take remedial actions in the day-to-day operation of a state institution. In short, the district court issued an injunction based solely

---

[1]In fact, the magistrate found precisely to the contrary:

> ". . . we have not been presented with evidence demonstrating whether or not the lighting in the cells is adequate. . . ." (60a);
>
> ". . . it is recommended that the Court rely on their decisions that the RHU has fulfilled all requirements to provide adequate ventilation in that unit." (61a);
>
> ". . . these facts [as to laundry] do not rise to the level of a constitutional violation . . . ." (64 a);
>
> "[t]he decision of the administration at SCIP to have correctional officers serve the meals in the RHU falls within the ambit of discretion left to state officials" (67a).

on state officials' failure to conform their conduct to state regulations despite findings that there had been no violation of federal law.

This interference with the daily operation of a state prison is precisely what this Court has identified is the danger in prisoner civil rights cases. Bell v. Wolfish, 441 U.S. 520 (1979). This Court has directed that a federal court's inquiry into matters of internal prison management must be limited to the issue whether a particular act violates the Constitution or a federal statute. Id. at 562. Moreover, the Court long has recognized that "a mere error of state law" does not violate the constitution per se. Engle v. Isaac, No. 80-1430 (April 5, 1982), slip op. at 12, n.21; Gryger v. Burke; 334 U.S. 728, 731 (1948). Absent a finding of a violation of the Constitution or federal law, the

district court simply lacked jurisdiction to order the prison officials to change their conduct to conform to state regulations. Ibid.

Moreover, the decision below is in direct conflict with the recent decisions in Pennhurst State School and Hospital v. Halderman, No. 81-2101 (January 23, 1984) (Pennhurst II) and Davis v. Scherer, No. 83-490 (June 28, 1984). In Pennhurst II, the Court expressly held that the Eleventh Amendment prohibits a federal court from awarding injunctive relief against state officials ordering them to conform their conduct to state law. Slip op. at 34. In unambiguous language, the Court has declared that "a claim that state officials violated state law in carrying out their official responsibilities is a claim against the state that is protected by the Eleventh Amendment."

Slip op. at 30. In Davis v. Scherer, the Court specifically rejected the contention that state officials forfeit their qualified immunity from suit for a violation of constitutional rights simply because they failed to comply with a state regulation. Slip op at 9-12. The Court held that only a showing of a violation of clearly established rights is sufficient, and where the regulation does not create a federal cause of action, there cannot be a denial of immunity for failure to conform to the regulation. Slip op at 9.

Thus, without finding a violation of federal law, the court below was without authority to enter relief for the inmates. While as a matter of policy generally it may be desirable to promote uniform state-wide standards in a state's institutions, failure to conform to those standards

does not state a claim under 42 U.S.C. §1983. Pennhurst II, supra.

2. The Decision Below Conflicts with the Decision of Other Courts of Appeals as to the Requirements of the United States Magistrates Act.

Section 636(b)(1) of Title 28 provides that, where a pretrial matter is referred by a district judge to a magistrate for proposed findings and recommendations, and the parties file written objections to the magistrate's recommendations, the district judge "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." In this case, the district court failed to conduct a de novo review of the record made before the magistrate. In fact, a transcript of the evidentiary hearings from which the magistrate made

his report was not filed until after the district court had issued its final order. The Court of Appeals' approval of this procedure conflicts directly with decisions of the Courts of other Circuits.

While Section 636(b)(1) of the Magistrates Act does not require that the district court hold a new hearing, it does require that "an appellate court must be satisfied that a district court judge has exercised his nondelegable authority by considering the actual testimony, and not merely reviewing the magistrate's report and recommendations." Hernandez v. Estelle, 711 F.2d 619, 620 (5th Cir. 1983). Failure to review the evidence presented to a magistrate and failure to have a transcript filed with the district court has been held to be reversible error. Orpiano v. Johnson, 687 F.2d 44, 48 (4th Cir. 1982). See

also United States v. Lewis, 621 F.2d 1382 (5th Cir. 1980).

In this case, the evidentiary hearing before the magistrate lasted ten days and produced 1294 pages of testimony from fifteen witnesses. The corrections officials filed objections to the magistrate's approval of the sufficiency of the evidence adduced with respect to the adequacy of lighting, ventilation, food service, laundry service and searches. The transcript of the evidentiary hearing, however, was not filed until after the district court issued its final order. Thus, despite the court's statement that it had conducted a de novo review, it is clear that it could not have done so. Given the nature of the officials' objections, it was crucial for the court to have reviewed the actual testimony. Absent that review, the court could not have

given appropriate consideration to those objections.

The Fifth Circuit has held that a district court's obligation under the Magistrates Act to arrive at "its own, independent conclusion" about those portions of the magistrate's report to which objection is made requires review of the "actual testimony" presented. Hernandez, supra, 711 F.2d at 620. Because the decision below conflicts with decisions of other Circuits, certiorari should be granted.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the decision of the Court of Appeals for the Third Circuit and upon review the judgment should be reversed.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 83-5204

STANTON STORY, GEORGE BROOKS, ROBERT JOYNER, LOUIS McLEMORE, LARRY HOWARD, Individually, and on behalf of all others similarly situated

v.

WILLIAM B. ROBINSON, Commissioner of the Bureau of Corrections; JAMES HOWARD, Superintendent of the State Correctional Institution at Pittsburgh, ROBERT MARONEY, Deputy Superintendent of Treatment at the State Correctional Institution at Pittsburgh; CHARLES ZIMMERMAN, Deputy Superintendent of Treatment at the State Correctional Institution at Pittsburgh; JAMES A. WIGTON, Classification and Treatment Supervisor of the State Correctional Institution at Pittsburgh, All Individually and in their official capacities

L. WEYANDT, C.J. KOZAKIEWICZ, E.J. KRALL, M. FERRIS, MR. MALLINGER, OFFICER SALVY, OFFICER BATISMA, SERGEANT ROBESON, CAPTAIN TWYMAN

William B. Robinson, et al.,

Appellants

Appeal From the United States District Court
For the Western District of Pennsylvania - Pittsburgh
D.C. Docket No.77-01204
Before Honorable Gerald J. Weber

Submitted Under Third Circuit Rule 12(6) March 14, 1984

Before HUNTER, HIGGINBOTHAM and SLOVITER, Circuit Judges

JUDGMENT ORDER

After consideration of all contentions raised by appellants, it is

ADJUDGED and ORDERED that the judgment of the district court be and is hereby affirmed.

Cost taxed against appellants.

By the Court,

Circuit Judge

Attest:

Clerk

Dated: April 18, 1984

CERTIFIED AS A TRUE COPY AND ISSUED IN LIEU OF A FORMAL MANDATE ON May 10, 1984.

Test: M. Elizabeth Ferguson
Chief Deputy Clerk, United States Court of Appeals for the Third Circuit.

C O P Y

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 83-5203

STANTON STORY, GEORGE BROOKS, ROBERT JOYNER, LOUIS McLEMORE, LARRY HOWARD, Individually, and on behalf of all others similarly situated

v.

WILLIAM B. ROBINSON, Commissioner of the Bureau of Corrections; JAMES HOWARD, Superintendent of the State Correctional Institution at Pittsburgh, ROBERT MARONEY, Deputy Superintendent of Treatment at the State Correctional Institution at Pittsburgh; CHARLES ZIMMERMAN, Deputy Superintendent of Treatment at the State Correctional Institution at Pittsburgh; JAMES A. WIGTON, Classification and Treatment Supervisor of the State Correctional Institution at Pittsburgh, All Individually and in their official capacities

L. WEYANDT, C.J. KOZAKIEWICZ, E.J. KRALL, M. FERRIS, MR. MALLINGER, OFFICER SALVY, OFFICER BATISMA, SERGEANT ROBESON, CAPTAIN TWYMAN

George Rahsaan Brooks,

Appellants

Appeal From the United States District Court

For the Western District of Pennsylvania - Pittsburgh

D.C. Docket No.77-01204

Before Honorable Gerald J. Weber

Submitted Under Third Circuit Rule 12(6) March 14, 1984

Before HUNTER, HIGGINBOTHAM and SLOVITER, Circuit Judges

JUDGMENT ORDER

After consideration of all contentions raised by appellant and cross-appellants, including George Rahsaan Brooks, to wit:

1. that his transfer from Allegheny County jail to State Correctional Institution violated his due process rights;

2. that his rights were violated by the prison's policies on visitation, strip searches, restraints and availability of notary service,

It is ADJUDGED and ORDERED that the judgment of the district court be and is hereby affirmed.

It is FURTHER ORDERED that appellee's motion to strike all portions of briefs addressing claims of non-appealing parties is granted.

It is FURTHER ORDERED and ADJUDGED that the judgment of the district court insofar as it relates to cross-appellants' challenge to the remedial relief ordered be and hereby is affirmed.

Costs taxed against appellant.

By the Court,

_____
Circuit Judge

Attest:

_____
Clerk

Dated:

Certified as a true copy and issued in lieu of a formal mandate on May 10, 1984.

Test:
Chief Deputy Clerk, United States Court of Appeals for the Third Circuit.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

STANTON STORY, GEORGE BROOKS, ROBERT JOYNER, LOUIS McLEMORE and LARRY HOWARD, individually, and on behalf of all others similarly situated, Plaintiffs	:
v.	:
Civil Action No. 77-1204	:
WILLIAM B. ROBINSON, Commissioner of Bureau of Corrections, et al., Defendants	:

MEMORANDUM OPINION AND ORDER

WEBER, J.

The plaintiffs in the above-captioned case brought a civil rights action challenging the general conditions in the Restrictive Housing Unit of the State Correctional Institution at Pittsburgh ("R.H.U."), as well as making certain allegations concerning the manner in which they were personally treated at the penitentiary.

After extensive pretrial proceedings, the matter was assigned to a United States Magistrate for evidentiary hearing and the submission of proposed findings of fact and conclusions of law. Accordingly, the matter came on for hearing before the Magistrate over a ten day period between June, 1981 and April, 1982. Following those hearings the Magistrate submitted a thorough detailed summary of the testimony presented, and the parties were invited to submit any additions, deletions or corrections to that summary. Such matters were filed by both sides to the litigation, and ultimately the Report and Recommendation and proposed findings of the Magistrate was filed and the parties were granted time in which to file any objections thereto. Objections were subsequently filed on behalf of all parties, and the matter is now in a

posture for final disposition.

It is provided in 28 U.S.C. §636 (b)(1) that where, as in the instant case, a matter is referred to a magistrate for proposed findings and recommendations for disposition, the parties shall have ten days to file written objections to such proposed findings and recommendations. Thereafter, a District Judge must make a de novo determination of those portions to which objections is made.

In United States v. Raddatz, 447 U.S. 667, 674 (1980) the Court recognized that "the statute calls for a de novo determination, not a de novo hearing." In this regard, the House Report, H.R. Rep. No.94-1609 at page 3 noted:

"The use of the words 'de novo determination' is not intended to require the judge to actually conduct a new hearing on contested issues. Normally, the judge, on application,

will consider the record which has been developed before the magistrate and make his own determination on the basis of that record, without being bound to adopt the findings and conclusions of the magistrate. In some specific instances, however, it may be necessary for the judge to modify or reject the findings of the magistrate, to take additional evidence, recall witnesses, of recommit the matter to the magistrate for further proceedings.

"With this in mind, we have examined the Magistrate's extensive summary of the testimony presented at the hearing as that summary was amended by the parties, and compared this record with the objections filed by the parties. Based on this examination we find the summary of testimony, as amended, provides a thorough synopsis of the testimony presented at the hearings.[1]

The bulk of the objections filed by the parties appear to be legal rather

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[1]We note that certain limited portions of the record of the hearings have been transcribed.

than factual in nature. However, as to those matters where factual objections are raised, we find that the detailed summary of testimony, as amended, provides an adequate basis for disposition of the matters raised.

The individual plaintiff's have filed objections to the findings of the Magistrate concerning their individual claims. We have thoroughly examined those objections and find, as a matter of law, that they are without merit. This conclusion is further bolstered by the decision of the Supreme Court in the case of Hewitt v.Helms, ___ U.S. ____, (No. 81-638, filed February 22, 1983), 51 L.W. 4124, which was filed after the Magistrate filed his report and proposed findings.

The plaintiffs have also challenged the findings of the Magistrate concerning the conditions in

the R.H.U. We have examined the record concerning the conditions in the R.H.U. and find them to be as set forth in the Magistrate's findings and with very limited exceptions, these conditions do not violate constitutional precepts.

The defendants have also challenged the findings of the Magistrate. We have examined those findings in view of the record and the applicable law and merely clarify that as to the issue of exercise, the finding was that limiting exercise to fifteen to twenty minutes constitutes cruel and unusual punishment. While we do not direct that any minimal exercise period be permitted, we would direct that a conscious effort be made to enable inmates to receive exercise privileges in keeping with Pennsylvania regulations requiring that to the extent possible inmates receive two hours of exercise a

day. In all other respects the defendants' objections are without merit.

An appropriate order will be entered.

O R D E R

AND NOW, this 3rd day of March, 1983, after the plaintiffs in the above-captioned case filed a civil rights complaint, and after an evidentiary hearing was held before a United States Magistrate, and after the Magistrate filed a detailed summary of the testimony, and the parties submitted additions thereto, and after a Report and Recommendation and Proposed Findings of Fact and Proposed Conclusions of Law was filed by the Magistrate, and the parties were granted ten days in which to file objections thereto, and in consideration of the objections filed by the plaintiffs and defendants, and upon de novo review of those matters to which objection was made, and upon independent review of the pleadings and the Magistrate's Report and Recommendation

and Proposed Findings of Fact and Conclusions of Law,

IT IS ORDERED that the Report and Recommendation and Proposed Findings of Fact and Proposed Conclusions of Law of the United States Magistrate, as modified by the foregoing Memorandum Opinion, be adopted as the opinion of this Court, and IT IS FURTHER ORDERED that:

1. The practice of double strip searching R.H.U. inmates both before and after visitations be abandoned, and that strip searches be limited to one search before a visit and one search after a visit;

2. Inmates housed in the R.H.U. be permitted more than fifteen to twenty minutes of exercise a day, and that to the extent possible they be permitted to enjoy that amount of exercise which is in conformity with Pennsylvania

regulations;

3. Within thirty (30) days, the defendants provide acceptable certification that the lighting the R.H.U. cells meets the standards established by the State Health Department;

4. The ventilation in the R.H.U. be brought in conformity with Department of Environmental Resources requirements, and certified as meeting those standards;

5. The food service in the R.H.U. be brought into conformity with Bureau of Corrections standards;

6. In mates in the R.H.U. be provided with laundry services similar to those enjoyed by inmates in the general prison population, and

7. Judgment be and is hereby entered in favor of the plaintiffs and against the defendants in the total sum of $1.00.

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

STANTON STORY, GEORGE BROOKS, ROBERT JOYNER, LOUIS McLEMORE and LARRY HOWARD, individually, and on behalf of all others similarly situated, Plaintiffs	:
v.	:
Civil Action No. 77-1204	:
WILLIAM B. ROBINSON, Commissioner of Bureau of Corrections, et al., Defendants	:

MAGISTRATE'S REPORT AND RECOMMENDATION
AND PROPOSED FINDINGS OF FACT AND
PROPOSED CONCLUSIONS OF LAW

RECOMMENDATION

It is respectfully recommended that judgment be entered against the plaintiffs and in favor of the defendants on all issues presented except the issues of strip searches and exercise, and that on these two issues judgment be entered against the defendants and in favor of the plaintiffs, and that the plaintiffs be

awarded nominal damages in the amount of $1.00;

It is further recommended that within thirty (30) days the defendants provide acceptable certification that the light in the RHU cells meets the standards established by the State Health Department;

It is further recommended that ventilation in the RHU conform with Department of Environmental Resources requirements;

It is further recommended that food service in the RHU conform with Bureau of Correction standards,

And it is further recommended that laundry service, similar to that provided to other inmates, be provided to inmates in the RHU.

REPORT

Stanton Story, George Brooks, Larry Howard, Louis McLemore and Robert Joyner have presented a civil rights complaint which they have been permitted to prosecute without the prepayment of costs. After the completion of pretrial procedures, the matter was assigned to the undersigned United States Magistrate for evidentiary hearing in conformity with the provisions of 28 U.S.C. §636(b)(1)(B). Accordingly, on June 17, June 23, September 10, September 16, and September 21, 1981 and March 22, March 23, March 24, March 25 and April 27, 1982 the matter came on for hearing. Following those hearings a summary of testimony was prepared and submitted to the parties with an order inviting suggested additions or deletions within ten days. That ten-day period has

elapsed and the matter is in a posture for final disposition.

At the hearings, the plaintiffs testified as to their individual claims and as to the general conditions of the Restricted Housing Unit at the State Correctional Institution at Pittsburgh ("SCIP").

According to the plaintiffs, these facts state a cause of action under the provisions of 42 U.S.C §1983 and they invoke the jurisdiction of this Court pursuant to Section 1343 of Title 28, United States Code. Named as defendants in this action are William B. Robinson, the Commissioner of the Bureau of Corrections; James Howard, the former Superintendent of the State Correctional Institution at Pittsburgh; Robert Maroney and James Wigton, Deputy Superintendents of the State Correctional Institution at Pittsburgh;

Charles Zimmerman, a former Deputy Superintendent of the State Correctional Institution at Pittsburgh; Charles Kozakiewicz, a former correctional officer of the State Correctional Institution at Pittsburgh; Steven Mallinger, the librarian of the State Correctional Institution at Pittsburgh; Michael Ferris, a counselor at the State Correctional Institution at Pittsburgh and Correctional Officers Krall, Batisma, Robeson and Twyman of the State Correctional Institution at Pittsburgh.

I. PLAINTIFF HOWARD

At the above mentioned hearings, Larry Howard testified that his constitutional rights were violated by his being found guilty of possession of implements of escape.

On September 5, 1977, plaintiff Howard was questioned by defendant Kozakiewicz about some grey powder,

screws and pamphlets found in an unidentified locker in the electric shop where Howard worked. After questioning plaintiff Howard was placed on "J" Range and later given a copy of the charges against him. (P-Ex 37) On September 7, 1977 a misconduct hearing was conducted. Major Weyandt, Officer Bailey and Officer Batisma comprised the misconduct hearing committee. The infraction was read to plaintiff Howard and he was shown the grey powder, screws, pamphlets, a pipe cap and an envelope addressed to him that had been found in a locker in the electric shop. Plaintiff Howard was not permitted to question the reporting officer. Although he was offered an opportunity to submit his version of the incident he refused to do so because he was also under police investigation for the same incident. Plaintiff Howard told the

hearing committee that he would not testify to both prison and police officials. He was permitted to call witnesses and did so. An inmate Taylor attended the hearing on plaintiff Howard's behalf and questioned the propriety of charging plaintiff Howard with possession of the powder, etc. without more proof than an envelope of his connecting him with the locker in which the items were found. Plaintiff Howard was found guilty and sentenced to 180 days in the Restricted Housing Unit ("RHU").

During his incarceration in the RHU, Plaintiff Howard received six monthly reviews by the Program Review Committee (PRC). (P-Ex 8). Plaintiff Howard told the PRC that he wanted a new hearing on his misconduct and that, after the state police investigation was completed, he would submit his written

version of the incident to the hearing committee. (D Ex-A). On February 6, 1978 a misconduct hearing was conducted. Because the misconduct hearing committee did not know if the police investigation was completed, plaintiff Howard refused to submit his version of the incident. This procedure was repeated on February 22, 1978 when plaintiff Howard again refused to submit his version because the police investigation was not completed.

At the evidentiary hearings on this civil rights suit plaintiff Howard testified that he did not try to make gunpowder; that the grey substance produced at the misconduct hearing was never proven to be gun powder; that the grey substance was never found to be under his control and that no informant testimony was presented at the hearing.

Deputy Wigton testified that it is common practice at SCIP to write up a misconduct on an inmate who is also subject to criminal prosecution for the same incident.

Defendant Kozakiewicz testified that he was the reporting officer on the misconduct. As result of a routine search of the electric shop, graphite, a knife, pipe caps and a book on guerilla warfare were found in a locker identified as being used by plaintiff Howard. Mr. Kozakiewicz wrote up the misconduct. He appeared at the misconduct hearing on September 8, 1977, as a witness, not as a member of the committee itself. Mr. Kozakiewicz did not remember if plaintiff Howard had been questioned by prison officials while under police investigation other than being offered by the opportunity to submit his written version of the

incident at the misconduct hearing.

Plaintiff Howard raises two questions--whether due process was denied him at the misconduct hearings and whether he was subject to double jeopardy by being questioned by prison officials while under police investigation.

In Wolff v. McDonnell, 418 U.S. 539 (1974), the Court held that an inmate must be given advanced written notice of the charges against him; that he has the right to call witnesses and present evidence in his behalf and that he be given a written statement by the misconduct hearing committee of the evidence relied upon.

Plaintiff Howard testified at the evidentiary hearings that he received a copy of the charges against him; that an inmate Taylor was present at the misconduct hearing as a witness

in his behalf; that he was offered an opportunity to submit a written statement of his version of the incident and that he received a written statement of the decision of the hearing committee.

Plaintiff Howard was not permitted to confront the correctional officers who wrote up the misconduct against him. However, the Court in Wolff v. McConnell, supra at 568, addressed this issue at length, expressing concern that:

> "...in the current environment, where prison disruption remains a serious concern to administrators, we cannot ignore the desire and effort of many States,..., and the Federal Government to avoid situations that may trigger deep emotions and that may scuttle the disciplinary process as a rehabilitation vehicle."

The Court went on to hold that due process does not require that an inmate be permitted to confront a reporting officer or inmate and that the decision

to permit such confrontation is left to the discretion of the administrators of the correctional institution.

Plaintiff Howard also argued that he would not testify or write his own version of the incident because that would place him in "double jeopardy" in that he was also under police investigation. It has been held in Kerns v. Parratt, 672 F.2d 690 (8th Cir. 1982), that charges brought against an inmate by the prison administration while criminal charges are pending do not place the inmate in "double jeopardy." Thus, the offer of an opportunity for plaintiff Howard to submit his written version of the incident does not constitute a violation of his rights under the Constitution or the laws of the United States.

II. PLAINTIFF STORY

Plaintiff Stanton Story contends that his constitutional rights were violated by the excessive use of force applied by prison officials in conducting a search of his person and by the misconduct hearing committee's decision finding him guilty of possession of contraband.

On September 15, 1977, plaintiff Story was receiving a visit from family members. He excused himself to go to the men's room and was met on the way by Officer Salvay. Plaintiff Story testified that Officer Salvay grabbed him and dragged him to the Major's Office. He testified that at the Major's Office he was jumped by a number of correctional officers who were trying to pry his mouth open. Plaintiff Story asked what was going on and was accused of having contraband in his mouth. He

denied having anything in his mouth and refused to open it. He was taken to the Strip and Search Room and back again to the Major's Office where defendants Maroney, Kozakiewicz and Weyandt were present with other correctional officers. Plaintiff Story testified that while he was handcuffed correctional officers tried to force his mouth open with a tongue depresser and metal objects; that defendant Kozakiewicz and Officer Batisma were hitting him and choking him in an effort to open his mouth and that nothing was recovered from his mouth in the search.

On September 15, 1977, plaintiff Story received misconducts for possession of contraband (marijuana) and disobeying a direct order. (D-Ex B,C). Major Weyandt, Officer Bailey and Counselor Good conducted the misconduct hearing on September 19, 1977 and

defendant Kozakiewicz and Sgt. Robertson were witnesses at that hearing. Plaintiff Story was permitted to call witnesses but did not request any. He did submit his written version of the incident. Plaintiff Story was found guilty of the charges and was sentenced to 180 days in the RHU.

At the evidentiary hearing on this civil rights suit, Major Weyandt testified that he was present when Story was searched in September 1977, but that he did not participate in the search. Major Weyandt was also the chairman of the hearing committee that reviewed the incident. Major Weyandt testified that he believed he was impartial even though he had witnessed the incident. He stated that in 1977 SCIP had a policy permitting officers who had witnessed incidents to participate in the misconduct hearings on those incidents.

Defendant Kozakiewicz testified that force was used on plaintiff Story because he resisted a search after being given a direct order to open his mouth. Plaintiff Story was kicking, butting with his head and flailing his arms while correctional officers were attempting to open his mouth. At that time, force was used. Defendant Kozakiewicz stated that he believed that the amount of force used against plaintiff Story did not equal the force of a "beating."

Deputy Maroney testified that he was present when plaintiff Story was searched and that something wrapped in tape was recovered from his mouth.

Plaintiff Story raises two questions--Whether the use of force by prison officials was a violation of his constitutional rights and whether the presence of Major Weyandt on the hearing

committee after he had witnessed the incident underlying the misconduct constituted a violation of his rights.

In Johnson v. Glick, 481 F.2d 1028, 1033 (2d Cir. 1973), cert. denied 414 U.S. 1033 (1973), the Court enunciated a test for determining whether an inmate's constitutional rights had been violated by the use of force. In the opinion, the Court stated:

> "..., a court must look to such factors as the need for the application of force, the relationship between the need and the amount of force used, the extent of injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm."

This test has been followed in other circuits as well. See: Lock v. Jenkins, 641 F.2d 488 (7th Cir. 1981); Putnam v. Gerloff, 639 F.2d 415 (8th Cir. 1981); King v. Blackenship, 636 F.2d 70 (4th Cir. 1980); Furtado v.

Bishop, 604 F.2d 80 (1st Cir. 1979), cert. denied 444 U.S. 1035 (1979); Meredith v. State of Arizona, 523 F.2d 481 (9th Cir. 1975).

In the instant case, the testimony reveals that plaintiff Story was resisting the efforts of correctional officers to extract contraband from his mouth; that he was flailing his arms and legs and butting with his head. It does not appear from the testimony that the efforts of the defendants and others in attempting to extract the contraband were made for malicious or sadistic purposes. Thus, their actions do not constitute an unconstitutional use of force against plaintiff Story.

The second question presented by plaintiff Story is whether his constitutional rights were violated by the fact that Major Weyandt, who had

witnessed the events of September 15, 1977, was also the chairman of the hearing committee on the misconduct.

In Meyers v. Alldredge, 492 F.2d 296, 306 (3d Cir. 1974), the Court held:

"...the requirement of an impartial [institutional] triunal prohibits only those officials who have a direct personal or otherwise substantial involvement, such as major participation in a judgmental or decision-making role, in the circumstances underlying the charge from sitting on the disciplinary body. This would normally include only those such as the charging and the investigating staff officers who were directly involved in the incident. It would not include those who are only tangentially affected by the alleged misconduct, such as prison officials who may have some administrative connection with such misconduct prior to hearings."

See also: Rhodes v. Robinson, 612 F.2d 766, 773 (3d Cir. 1979).

In the present case, Major Weyandt did not participate in the search of plaintiff Story. Although he was present at the search, his involvement did not rise to the level of a "direct personal or otherwise

substantial involvement" in the events of September 15, 1977. In addition, Major Weyandt testified at the evidentiary hearing that he believed he was impartial even though he had witnessed the incident. Therefore, Major Weyandt's participation as chairman of the misconduct hearing on plaintiff Story was not improper and did not violate the mandate in Wolff v. McDonnell, supra.

III. PLAINTIFF JOYNER

At the above mentioned hearings, Plaintiff Robert Joyner testified that his constitutional rights were violated by his incarceration in the RHU for ten months after the expiration of his disciplinary sentence.

On August 6, 1977, Joyner was placed in the RHU to serve 180 days in disciplinary custody "close" for

attempted escape, possession of implements of escape and attempted assault on Defendant Kozakiewicz. Following the completion of the sentence he remained in the RHU for an additional ten months without the benefit of any extra privileges.

After plaintiff Joyner completed his sentence he was maintained in the RHU in administrative custody "close" which differs from disciplinary custody "close" in that there is no definite term or sentence to be served and there are more privileges afforded the inmate, including the possible receipt of prison wages. Plaintiff Joyner did not receive a separate hearing when his status changed.

The PRC reviewed plaintiff Joyner's case monthly. (P-Ex 15, 26). In the reviews the PRC stated that plaintiff Joyner was considered an

escape risk and that he also had to be separated from the staff. In addition, the PRC reviews show that the PRC was seeking to have him transferred out of SCIP to the State Correctional Institution at Graterford.

At the evidentiary hearing in this civil rights suit, defendant Maroney testified that plaintiff Joyner received only one misconduct while in the RHU. (P-Ex 27). The misconduct was for possession of a "fishing line" which was used to pass books or other items from cell to cell in the RHU. As result of his being found guilty of the misconduct, plaintiff Joyner was denied yard privileges for ten days.

Deputy Wigton testified at the evidentiary hearing that it was possible in 1979 that plaintiff Joyner was not informed of his change in status from disciplinary custody to administrative

custody and that he may not have received the greater privileges that accrue to inmates in administrative custody.

Defendant Kozakiewicz testified at the evidentiary hearing that the original misconduct for which plaintiff Joyner was placed in the RHU centered around plaintiff Joyner's attempt, along with some other inmates, to throw him off the top tier of a general population cell block. Defendant Kozakiewicz testified that he was not asked to give input to the PRC's decisions to maintain plaintiff Joyner in administrative custody. He stated that he had not received any threats from plaintiff Joyner while he was housed in the RHU and that when plaintiff Joyner was ultimately released from the RHU back into the general population nothing happened between them.

In Helms v. Hewitt, 655 F.2d 487 (3d Cir. 1981), the Court addressed the question of whether an inmate is entitled to a hearing, comporting with the standards enunciated in Wolff v. McDonnell, supra, when he is placed in administrative segregation. The Court found that an inmate confined in administrative custody must be afforded a hearing either before confinement or within a reasonable period after confinement. This requirement is based on a liberty interest created through Title 37, Pa. Code Sections 95.101-95.108 wherein the procedure for dealing with violations of prison rules and for maintaining control and security within the institution is established. The Court held in Helms that because the Commonwealth of Pennsylvania created this liberty interest, the requirements enunciated in Wolff must be met before

an inmate may be placed in administrative custody.

Although the Court did not address the factual situation in which plaintiff Joyner had found himself, it can be reasoned that an inmate in disciplinary custody has a reasonable expectation that he will be returned to the general population upon the completion of his disciplinary sentence and that plaintiff Joyner's shift from disciplinary custody to administrative custody without the benefit of a hearing was denial of due process.

While it is true that in Helms v. Hewitt, supra, the Court held that inmates are entitled to a hearing before being placed in administrative custody, it must be remembered that Helms was decided in June 1981, while the change in status of plaintiff Joyner took place in 1977. The decision in Helms should

not be given retrospective application. In Linkletter v. Walker, 381 U.S. 618, 629 (1965), the Supreme Court weighed the question of prospective or retrospective application of its decisions by

> "... Looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation."

Looking first to the prior history of the rule in question, the decision in Helms is an expansion of the Supreme Court decision in Wolff v. McDonnell, supra, to include those inmates placed in administrative custody among the inmates who must be given a hearing before being removed from the general prison population. At the time of plaintiff Joyner's change of status, those inmates placed in administrative custody were not required to be given a hearing that comported with the standards enunciated in Wolff. Plaintiff

Joyner did receive monthly PRC reviews and was informed that he was being maintained in the RHU as a security risk while the PRC attempted to effectuate a transfer for him to another correctional facility.

The purpose of the ruling in Wolff and its expansion in Helms is to protect the individual against arbitrary institutional action. Wolff v. McDonnell, supra at 558; Helms v. Hewitt, supra at p. 502. The retrospective application of Helms would neither further nor hinder its operation. However, it would impose an unfair hardship upon the prison administrators who complied with the due process requirements as they existed at the time of the change in plaintiff Joyner's status.

In Wolff v. McDonnell, supra, at p. 574, the Supreme Court refused to

grant retrospective application to their ruling stating that:

> "...great weight should be given to the significant impact a retroactivity ruling would have on the administration of all prisons in the country, and the reliance prison officials placed, in good faith, on prior law not requiring such procedures."

Applying this standard, it would appear that retrospective application should be denied. A finding otherwise would necessitate the prison system to review its files for those inmates whose status was changed from disciplinary custody to administrative custody without the benefit of a hearing. It would then require a determination of whether or not those changes in custody would be upheld.

In the instant case, the requirements existing at the time of the plaintiff's change of status were met. Thus, although his change of status did not meet the constitutional requirements

enunciated four years later in Helms, those requirements did not apply at the time Joyner's status was changed.

IV. PLAINTIFF McLEMORE

At the above mentioned evidentiary hearings, plaintiff Louis McLemore testified that his constitutional rights were violated because he was unable to confer with witnesses and establish a defense before he received the misconduct hearing which ultimately led to his incarceration in the RHU.

On August 25, 1977 at 11:30 a.m. plaintiff McLemore received a misconduct charging him with possession of a broom handle. At that time, he was placed on "J" Range until August 26, 1977 at 1:00 p.m. when a disciplinary hearing was held on the misconduct report. (D-Ex E).

Deputy Wigton testified that a

SCIP, misconduct hearings may not be conducted until at Least twenty-four (24) Hours after an inmate has received a copy of his misconduct report and no later than six (6) days after receipt of the misconduct. However, Deputy defendant Wigton testified that it would not be a violation of Pennsylvania Directive 801 to hold a misconduct hearing within twenty-four hours of receipt of the misconduct report.

As previously stated, the Court in Wolff held that certain procedural requirements must be met in order for an inmate to be provided due process in a disciplinary hearing. Included among them is the requirement that an inmate receive advanced written notice of the charges against him at least twenty-four hours before his disciplinary hearing is conducted. The purpose of this requirement is to provide the inmate an

opportunity to prepare a defense to the charges.

In the present case, plaintiff McLemore was provided twenty-five and one-half hours to prepare his case. Plaintiff McLemore argues that during this time he was held in segregation in "investigative" status and that he was unable to contact any witnesses in his behalf. Plaintiff McLemore still was permitted to request inmate representation and inmate witnesses to be present at his misconduct hearing. The fact that plaintiff McLemore was unable to physically contact any witnesses in his behalf does not constitute a violation of his right to due process.

V. PLAINTIFF BROOKS

At the above mentioned evidentiary hearing, plaintiff George R.

Brooks testified that his constitutional rights were violated by virtue of his transfer from the Allegheny County Jail to SCIP and his subsequent incarceration in the RHU at SCIP.

The testimony elicited at the evidentiary hearings reveals that in September 1977 plaintiff Brooks was involved in an incident at the Allegheny County Jail in which he threatened jail staff with a handmade knife. (D Ex-I). This incident marked plaintiff Brooks as a security risk and as such he was transferred to SCIP where security is more strenuous. Upon arrival at SCIP Lt. James Higgins, a correctional officer at SCIP, wrote up plaintiff Brooks for disrupting prison routine and threatening an officer at the Allegheny County Jail. (P Ex-80). As ranking officer at the time, Lt. Higgins also approved the misconduct.

The report of the disciplinary proceedings (P-Ex-80) reveals that plaintiff Brooks was given a copy of the misconduct report on September 19, 1977 at approximately 9:35 p.m. He received a disciplinary hearing on September 21, 1977 which was held in the RHU. Defendant Kozakiewicz and Officer Bailey were present as members of the hearing committee. Plaintiff Brooks testified that he had requested inmate Owens-El to be his representative at the misconduct hearing and that defendant Kozakiewicz would not permit him to be present.

Defendants Kozakiewicz and Deputy Wigton testified that it is a policy at SCIP to hold disciplinary hearings for infractions incurred at the Allegheny County Jail when the inmate is transferred to SCIP. An inmate from the Allegheny County Jail receives a copy of the misconduct setting forth the reasons

underlying his transfer and a hearing to determine if the inmate should be placed in the general population or a more secure unit. At the hearing, information from the county jail would be provided to the hearing committee. For the most part, a staff member from the county jail would not be present at the disciplinary hearing at SCIP because of policy considerations, logistics and manpower shortages.

Defendant Kozakiewicz testified that an inmate transferred to SCIP from any county jail would receive a hearing at SCIP even if a hearing had already been held on the incident underlying his transfer at the county jail. Such a hearing would concern the inmate's change of jail and any information concerning the reasons underlying his transfer would be provided to the hearing committee.

In addition, an inmate going through a hearing on his transfer from county jail would be permitted inmate representation and inmate witnesses. According to defendant Kozakiewicz, in plaintiff Brook's case, inmate Owens-El was not permitted to be present at the misconduct hearing because the request was for inmate Owens-El to witness the hearing and not for inmate Owens-El to represent plaintiff Brooks or testify on his behalf.

The court, in Cobb v. Aytch, 643 F.2d 946 (3d Cir. 1981), addressed the issue of transfers of pretrial detainees from county facilities in Philadelphia to state correctional institutions across the Commonwealth of Pennsylvania. The Court examined the federal rights that accrue to a pretrial detainee and held that the right to access to counsel and the right to a

speedy trial were hampered by the transfer to a state correctional facility. In addition, the Court held that in accordance with Pennsylvania law the Court of Common Pleas in the county in which the pretrial detainee was held pending trial must review the transfer either before it occurs or, in exigent circumstances, after the transfer but within a reasonable time. In the instant case, plaintiff Brooks was transferred from the Allegheny County Jail to the State Correctional Institution at Pittsburgh without the benefit of review by the Court of Common Pleas of Allegheny County either before he was transferred or within a reasonable time there-after. Although a hearing was conducted at SCIP by the prison officials, this was insufficient to meet the requirements of Cobb v. Aytch, supra at 961 in which the Court

specifically held that the transfer hearing is to be held "in a Pennsylvania tribunal independent of the prison system."

Plaintiff Brooks' transfer to SCIP took place in September 1977 while the decision in Cobb v. Aytch, supra, was handed down in March 1981. This decision should not be given retrospective application. Applying the test in Linkletter v. Walker, supra at 629, we must weigh the question of prospective or retrospective application of Cobb by

> "...looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation."

The litigation of Cobb spanned eight years. The complaint was filed in June 1973. In July 1975 a consent decree was filed binding the Commonwealth not to accept pretrial

detainees at state correctional institutions unless the pretrial detainee consented. On appeal in July 1976, the Third Circuit Court of Appeals reversed the District Court's affirmance of the consent decree and remanded the case for trial. In January 1977, the Bureau of Corrections issued a memorandum requiring the completion and acceptance of a Petition for Transfer from, the conduct of a transfer hearing and the submission of the Petition to the Court of Common Pleas for approval before a pretrial detainee could be transferred to a state correctional institution. The Court in Cobb explained that

> "[t]his memorandum, while it states a policy of the Commonwealth defendants as of January 1977, is neither a statute nor a regulation having the force of law, and the policy it states may be changed at any time."

Cobb v. Aytch, supra at 950. The case

was heard at trial in January 1979 and cross appeals were taken from the decision of the District Court that same year. The final opinion of the Third Circuit Court of Appeals was filed on March 13, 1981. Thus, it is evident from the recitation of the history of this case that at the time plaintiff Brooks was transferred from the Allegheny County Jail to SCIP there did not exist a clear rule governing such action.

The second part of the Linkletter test for retrospective application of a ruling is to look to the purpose and effect of the ruling and whether its retrospective application would "further or retard its operation". The purpose of the ruling in Cobb is to ensure that pretrial detainees are afforded their right to counsel and to a speedy trial.

Retrospective application of this ruling would not further or retard its operation because the individuals to whom it would apply have already completed their trials and sentencing or have been release.

In the instant case, the decision in Cobb should not be given retrospective application.

In addition, plaintiff Brooks alleges that the misconduct hearing he received at SCIP did not comport with the requirements enunciated in Wolff v. McDonnell, supra. As previously stated, the Court in Wolff held that an inmate must be given advanced written notice of the charges against him; that he has the right to call witnesses and present evidence in his behalf and that he be given a written statement by the misconduct hearing committee of the evidence relied upon.

At the evidentiary hearing in this civil rights suit, it was established that a copy of the misconduct report was given to plaintiff Brooks on September 19, 1977 at approximately 9:35 p.m. On September 21, 1977, plaintiff Brooks received a misconduct hearing at which time he submitted his written version of the incident. Plaintiff Brooks requested that inmate Owens-El be his witness, however, that request was denied because inmate Owens-El was not at the Allegheny County jail when the incident which was the basis of the misconduct took place. In addition, plaintiff Brooks received a written statement by the misconduct hearing committee. (P-Ex 80). Thus, the misconduct hearing procedures enunciated in Wolff were met.

VI. THE RESTRICTIVE HOUSING UNIT (RHU)

In addition to their individual claims, the plaintiffs allege that the conditions of their confinement in the RHU constituted a violation of their constitutional rights.

The RHU is a separate building on the SCIP grounds. There are four ranges above ground in the RHU - U, V, W, and X. Each range has nine or ten cells. Below ground there is another range.[1]

The RHU is manned from 8:00 a.m. to 4:00 p.m. by a lieutenant, a sergeant and five correctional officers, and from 4:00 p.m. to 8:00 a.m. by a sergeant and one correctional officer.

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[1]This subterranean portion of the RHU has been the subject of other litigation. Mayberry v. Maroney, 558 F.2d 1159 (3rd Cir. 1977).

The cells in the RHU are furnished with a bed made of a concrete slab approximately 6-1/2' by 2-1/2' covered with two mattresses, a toilet encased in concrete and a sink. Lighting is provided by 60 watt lightbulbs suspended from fixtures in the corridor ceiling outside the cells.[2]

A. Sanitation

The plaintiffs allege that adequate sanitation could not be maintained while they were in the RHU because they were not provided with cleaning supplies with which to clean their cells.

Deputy Maroney testified at the

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[2]During the pendency of this suit we made an unannounced visit to the RHU and viewed the cells, and it would appear that the testimonial description accurately reflects the appearance of these cell blocks.

evidentiary hearings that in 1977 RHU inmates were provided with rags with which to clean their cells and that, at present, disinfectant powder, a water bucket and a rag or brush are provided to RHU inmates. Thus, in fact, the RHU inmates were permitted some items with which to clean their cells. In view of security requirements it is properly within the discretion of the institution administration to limit what types of items are provided to these inmates. Jones v. Diamond, 594 F.2d 997 (5th Cir. 1979), cert. dismissed 453 U.S. 950 (1981).

B. Lighting

The plaintiffs also allege that lighting was inadequate in the RHU cells. Plaintiff Howard was prescribed glasses while he was housed in the RHU. Plaintiff Brooks had to sit on the floor by the cell door in order to read and

had been given eyedrops while housed in the RHU. Plaintiff Joyner testified that the light switch was under the control of the RHU officers and that the lights would be turned on and off as the officers saw fit.

Deputy Maroney testified that the light fixtures are located outside the RHU cells in order to avoid any injury to the inmates or the staff and that research is being conducted on installing a new light fixture that could be maintained in the individual cells that would not endanger the inmates or staff. At present, 60 watt light bulbs are being used in the corridor fixtures. In the recent past, 100 watt lightbulbs were being used until it was discovered that the electrical system in the RHU shorted-out when the higher wattage lightbulbs were being used to correct the situation.

Deputy Maroney testified that the minimum standard for lighting is 30 candlefeet per cell.

While we have not been presented with evidence demonstrating whether or not the lighting in the cells is ade-quate, to a larger extent this may be attributed to the inability of the indigent, pro se plaintiffs to secure such information. Under these circumstanstances, it is recommended that the defendants be required within thirty (30) days to provide acceptable certification that the lighting in the RHU cells conforms with the standards established by the State Health Department or else correct the lighting to comport with those standards and then file an appropriate certification.

C. Ventilation

In addition to sanitation and lighting, the plaintiffs allege that the

ventilation system in the RHU is inadequate. Deputy Wigton testified that the RHU had undergone and passed a number of inspections of the heating and ventilation system by the Department of Environmental Resources. Deputy Maroney added that the RHU was constructed to provide fresh air ventilation and that the RHU is thermostatically controlled to provide an average temperature of 72° Fahrenheit.

Because the only standard available to the Court to measure the adequacy of the ventilation system in the RHU is that adopted by the Department of Environmental Resources, it is recommended that the Court rely on their decisions that the RHU has fulfilled all requirements to provide adequate ventilation in that unit.

D. Personal Hygiene

The plaintiffs also allege that

in 1977 provisions were not made for proper personal hygiene to be maintained. Plaintiffs Howard and Brooks testified that they did not have hot running water in their RHU cells. Exhibits provided by the plaintiffs establish that plaintiff Brooks, at least, had hot running water in the first RHU cell he was held in and that the lack of hot running water in his cell was temporary, having been merely a matter of the sink needing repair. (P-Ex 84).

Plaintiff Howard testified that the RHU inmates shave with razors provided by the RHU and that the razors provided are often dull and that sometimes they are dirty. Razors must be requested at the 5:30 a.m. call. They are given to the inmate at washtime and are returned immediately after shaving.

The RHU administration has an obvious interest in maintaining full control of this particular item. Neither the fact the RHU inmates are not permitted to maintain razors in their possession nor the fact that the razors are sometimes dirty raise questions of constitutional magnitude. Rather as Bell v. Wolfish requires, this is a judgmental decision clearly entrusted to prison administration.

E. Clothing

Another contention the plaintiffs raise is that they are required to wear blue pin-striped jumpsuits and canvas loafers while incarcerated in the RHU. Inmates may not purchase or wear any other outerwear except that provided by the RHU. Socks and underwear are not provided to the inmates. The jumpsuits are laundered by the institution laundry. Any

personal clothing articles such as socks or underwear must be wash usually in the cell sink. While these facts do n magnitude of a constitutional violation, it should be noted that in regards to socks and underwear, inmates in the RHU should be treated no differently from other prison inmates. Thus, if other inmates have their underwear and socks laundered at the prison laundry, RHU inmates should enjoy the same benefit.

F. Food

The plaintiffs also complain about the food in the RHU. Meals are served to RHU inmates in their cells. Breakfast is served between 7:00 and 7:30 a.m.; lunch is served between 11:00 and 11:30 a.m., and dinner is served between 3:00 and 3:30 p.m., before the RHU day shift leaves the premises.

The meals are brought to the RHU in steam carts from the main kitchen.

RHU inmates are served the same food as that served to the general population and the corrections staff. The RHU staff serves the meals to RHU inmates rather than food service personnel because the RHU staff is more familiar with procedures for dealing with maximum security inmates. These officers are provided training in the way to serve the food. They do not wear special uniforms when serving food. They are not required to wear hats or other sanitary garb.

The plaintiffs testified that the food served in the RHU is usually served cold, and they believe the RHU staff does not take necessary sanitary precautions when serving the food. Plaintiff Joyner testified that he noticed one particular officer coughing and sneezing over the food he was serving.

The plaintiffs also testified that those inmates who are Muslim or Jewish and who by religious law may not eat pork are not served a substitute for pork on the nights it is served at SCIP.

Sections 95.191-95.195 of Title 37, Pennsylvania Code and the Bureau of Correction Administrative Directive 610 govern the food service at SCIP. They both provide that foods containing pork be clearly marked as such and that a substitute food (e.g. vegetables) be offered for those who do not eat pork. In behalf of the defendants, testimony was offered at the evidentiary hearing in this civil rights suit that this policy is carried out in the general population and in the RHU.

There has been no allegation by the plaintiffs that they have fallen ill after eating the food or that their nutritional needs have not been met.

They do allege that the use of correctional officers and what they believe to be the lack of sanitary precautions violates their constitutional rights.

In Bell v. Wolfish, the Court held that federal inquiry into matters of prison management must be limited to the issue of whether a particular act violated any prohibition of the Constitution or any federal statute and that the broad range of permissible operational day-to-day "judgment calls" must rest with the appropriate state authorities and not with the federal courts. See also: St. Claire v. Cuyler, 634 F.2d 109 (3rd Cir. 1980).

The decision of the administration at SCIP to have correctional officers serve the meals to the RHU falls within the ambit of discretion left to state officials. However, the

Bureau of Corrections Administrative Directive 601 requires that all food handlers be screened,[3] have annual physical examinations and receive training in personal and food service hygiene. While this requirement applies to inmates employed in the Food Service Department, we believe it should also apply to the correctional officers assigned to the RHU who serve meals to the inmates.

G. Library

The plaintiffs allege that their constitutional rights were violated by the limited library privileges afforded them while they were housed in the RHU.

RHU inmates are not permitted out of their cells to go to the library

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[3]The following tests comprise the screening of food handlers: serology, urinalysis, fecal specimen and PPD for tuberculosis.

for either recreational purposes or for conducting legal research. In 1976 and 1977 library service to the RHU was sporadic and no policy existed for the release of law books to the RHU. In 1978, a procedure was established whereby an RHU inmate could submit a written request for a specific volume and that volume if available would be provided to the inmates. Before a book is provided to an RHU inmate, the officer on duty in the RHU must examine the book to determine whether the book poses a security risk by virtue of a mental binding or other security problem.

The library does not provide xeroxing services or stationery supplies to indigent inmates in the general prison population or in the RHU.

The plaintiffs submitted exhibits to demonstrate that they were denied access to legal materials while

they were housed in the RHU. (P-Ex 1, 6,14). In each of these exhibits an RHU inmate's request for the provision of a book was denied. However, in Plaintiff's Exhibits 6 and 14 the librarian explained that any request for specific information from the books requested would be provided by the law library.

The provision of a law library or other sources of legal knowledge are constitutionally mandated. Younger v. Gilmore, 404 U.S. 15 (1971). This mandate requires that prison administrations provide an adequate law library or adequate assistance from persons trained in the law. Bounds v. Smith, 430 U.S. 817 (1977).

In the instant case, even though plaintiffs were not permitted to conduct research in the law library or receive books for part of their time in the RHU,

they did have an opportunity to receive the information they wanted from the volumes requested by virtue of the policy of providing specific information from the books requested. This policy constitutes the "other sources of legal knowledge" and the "adequate assistance from persons trained in the law" required by the above cases.

H. Visitation

The plaintiffs contend that the restrictions placed on visiting privileges for RHU inmates also violates their constitutional rights.

All inmates at SCIP are permitted five visits per month with up to ten individuals visiting at one time. Visiting privileges for RHU inmates are limited to the hours between 8:30 a.m. and 3:00 p.m. Inmates in the general population are permitted visits

until 8:00 p.m. Only two RHU inmates are permitted visitors at the same time. When two RHU inmates receive visitors and a Third RHU inmates has a visitor, the inmate who has been visiting the longest has his visit terminated.

Bureau of Correction Administrative Directive 812 governs visiting privileges. (P-Ex 30). It states that morning and afternoon visiting hours are to be maintained and that evening visiting hours may be maintained.

The denial of visitation privileges without a reasonable justification might amount to a constitutional violation. Thomas v. Brierly, 481 F.2d 660 (3d Cir. 1973). However, the manner in which visitation privileges are granted rests within the discretion of prison administrators.

Inmates v. Pierce, 612 F.2d 754 (3d Cir. 1979).

Visitation privileges for RHU inmates are limited to day hours because of a policy at SCIP requiring RHU inmates to be escorted by two RHU correctional officers whenever they leave the unit. Because there are only two correctional officers on duty in the evening hours, visits at that time would leave the RHU unattended. This limitation is certainly within the discretion of the administrators of SCIP and does not constitute a violation of the plaintiffs'rights as guaranteed by the Constitution or the laws of the United States. Bell v. Wolfish, supra.

In addition to a time limitation imposed on RHU inmates' visitation, these inmates are subject to four strip searches during the visiting process. A strip search is an observation of the

inmate's naked body placed in a prone position.

Before an RHU inmate leaves the unit to go to a visit he is given a strip search and placed in restraints. The inmate is then escorted to a strip and search room near the visiting area where a second strip search is conducted before the inmate dons institutional visiting clothes. At the conclusion of the visit another strip search is conducted in the strip and search room. The inmates is again placed in restraints and escorted back to his cell in the RHU where a fourth strip search is conducted.

At the evidentiary hearing in this civil rights suit Deputy Maroney testified that RHU inmates do not come into contact with any other inmates during the time between the first strip search in the RHU and the second strip

search in the strip and search room and vice versa on their return to the RHU.

In Bell v. Wolfish, supra at 559, the Court held that a strip and cavity search conducted after an inmate received a contact visit does not violate the Fourth Amendment guarantee against unreasonable searches and seizures. The Court stated that in order to decide if the search is reasonable a court must balance "the need for the particular search against the invasion of personal rights that the search entails."

Applying this test to the case at bar, we can understand the need for a strip search before and after a visit. However, there is no apparent necessity to subject RHU inmates to two such searches before and after a visit when it has been established by testimony at the evidentiary hearings that RHU in-

mates do not come into contact with any other inmates in the interim period between the RHU and the strip and search room, are in restraints, and are accompanied by two prison officials. Therefore, subjecting these plaintiffs to four strip searches without adequate reason is a violation of their right of freedom from unreasonable searches guaranteed by the Fourth and Fourteenth Amendments, and it is recommended that inmates be subject to only one strip search before, and one strip search after visitation.

J. Exercise

The plaintiffs allege that they were denied an adequate amount of time to exercise while they were housed in the RHU.

RHU inmates have an opportunity to exercise week days only from 8:00 a.m. to 11:00 a.m. and from 1:00 p.m.

until 3:00 p.m. An inmate signs up for exercise at the 5:30 a.m. call. The length of the exercise period an inmate receives depends on the number of inmates requesting exercise and the number of correctional officers available in the RHU to supervise the exercise period. The average exercise period lasts fifteen to twenty minutes.

Only two inmates are permitted in the exercise yard at a time. Inmates incarcerated in the RHU for misconducts have been placed in the exercise yard with inmates incarcerated in the RHU for psychiatric problems. While in the RHU, Joyner was threatened by an inmate with psychiatric problems who was permitted to exercise at the same time. Although RHU officers were present, nothing was done about the inmate's threats.

The exercise yard is approximately 50' by 30' and is

surrounded by walls overseen by two gun towers. At the hearings, Deputy Wigton testified that this yard is being partitioned to allow more inmates to exercise and still maintain security. There is no accommodation for exercise inside the RHU during inclement weather.

It is provided in 61 P.S. §101 that:

> "Every warden...shall provide...at least two hours daily, physical exercise in the open, weather permitting, and upon such days on which the weather is inclement, such person shall have two hours, daily, of physical exercise indoors."

Restricting an inmate's opportunity for physical exercise may be cruel and unusual punishment. Hoptowit v. Ray, 682 F.2d 1258 (9th Cir. 1982); Ruiz v. Estelle, 679 F.2d 1115 (5th Cir. 1982); Clay v. Miller, 626 F.2d 345 (4th Cir. 1980). A court should consider the size of the cell, the amount of time the inmate is locked up and the overall

duration of the confinement to determine whether or not the time and type of exercise afforded is proper. Ruiz v. Estelle, supra at 1152.

In the instant case, the plaintiffs were housed in small individual cells. They spend almost twenty-four hours a day in their cells, coming out of them only for showers, exercise or medical attention. They were housed in these cells for six months and in plaintiff Joyner's case sixteen months. Under these circumstances, providing only fifteen to twenty minutes of exercise a day constitutes cruel and unusual punishment, and should be corrected to conform with minimum Bureau requirements.

K. Religion

The plaintiffs also allege that their constitutional right to the free

exercise of religion was violated while they were housed in the RHU.

RHU inmates are not permitted to attend religious services conducted for the general prison population and religious services are not conducted within the confines of the RHU. RHU inmates are permitted to see a spiritual advisor (e.g. minister of Imam) who is brought to the RHU and visits with the inmate at his cell door. These visits are permitted during the day time and are terminated by 3:30 p.m.

Plaintiff Howard has received visits from an Imam. He testified that these visits were unsatisfactory due to a lack of privacy and the time limitation.

In St. Claire v. Cuyler, 623 F.2d 109 (3d Cir. 1980), the Court directly addressed the question of

denying RHU inmates participation in religious services with the general prison population. The Court held that the policy of denying this participation was not a constitutional violation and the establishment of this policy was within the discretion of the prison administrators.

In the instant case, the plaintiffs were permitted to have visits from their spiritual advisors even though they were not permitted to participate in the religious services with the general prison population. The limitations on location and the time frame of these visits does not constitute a violation of the plaintiffs' right to the free exercise of their religion. Bell v. Wolfish, supra.

L. Notary

The plaintiffs contend that the

availability of the services of a notary on only one day a week constitutes a violation of their rights.

Notary services are available to RHU inmates every Wednesday. In order to obtain the services of a notary, an RHU inmate must submit a written request one week in advance. An inmate who had not submitted a request for notary services the prior week could not be granted those services, even though the notary was present in the RHU.

Deputy Maroney testified that notary services are provided in the RHU only one day a week because the notary is busy serving the general inmate population on the other two days he visits SCIP.

Section 93.2 of Title 37, Pennsylvania Code provides that:

"Notary services shall be available for inmates desiring to file legal documents..."

As long as the services are reasonably available, the procedure established for the provision of notary services in accordance with the above section to inmates housed in the RHU is within the discretion of the administrators of SCIP. Bell v. Wolfish, supra.

Educational Programs

In addition, the plaintiffs contend that their constitutional rights were violated because educational programs were not available to them while they were housed in the RHU.

RHU inmates are not permitted to participate in educational programs with the general prison population because they are generally not permitted to leave the RHU. Prior to his placement in the RHU, plaintiff Story was participating in college classes and

classes in barbering. He was dropped from the roles in these classes because he could not leave the RHU to attend them. (P-Ex 18).

Deputy Maroney testified that at the time of the evidentiary hearings in this case an educational program for RHU inmates had been established or was in the process of implementation.

Idleness or the lack of rehabilitative or educational programs does not violate constitutional guarantees against cruel and unusual punishment. Rhodes v. Chapman, 452 U.S. 337 (1980).

N. Commissary Purchases

The plaintiffs allege that their constitutional rights were violated because they were not free to purchase from the commissary all the items that are listed in Bureau of Correction Administrative Directive 815 (P-Ex 57).

RHU inmates are not permitted to visit the commissary, but commissary items are brought to the RHU. Inmates housed in the RHU are not permitted to purchase outerwear or items containing metal (e.g. toothpaste in tubes). The restriction on items containing metal is based on their ability to be made into weapons. Instead, items normally purchased from commissary that are packaged in some metal form are provided to the RHU inmates in other containers.

The restrictions imposed on the purchase of commissary items are within the discretion of the prison administration and do not constitute a violation of the plaintiffs' rights under the Constitution or the laws of the United States. Bell v. Wolfish, supra.

O. Medical Treatment

The plaintiffs also contend that

the medical treatment provided to RHU inmates is inadequate.

SCIP employs two full-time doctors who are on duty at the institution from 8:00 a.m. to 4:00 p.m. A doctor conducts rounds in the RHU seven days a week. There are nurses on duty at SCIP that provide medical assistance for a total of eighteen hours a day seven days a week. Pursuant to Bureau of Correction Administrative Directive 820 (P-Ex 36), the Chief Medical Officer, Officer Morrash, visits the RHU daily and a monthly inspection of the RHU and the entire correctional facility is conducted.

There are four psychiatrists, two doctors of psychology and three assistants providing psychiatric services at SCIP. RHU inmates may receive visits from these professionals at the institution hospital or at their

cells. In addition, emergency medical personnel are on call twenty-four hours a day.

In order to establish a constitutional violation for inadequate medical treatment a plaintiff must prove that the conduct evidenced "deliberate indifference to a prisoner's serious illness or injury," or that [s]ystemic deficiencies in staffing" effectively denied the plaintiff access to qualified medical treatment. Estelle v. Gamble, 429 U.S. 97, 105 (1976); Inmates v. Pierce, 612 F.2d 754 at 762 (3d Cir. 1979). The plaintiffs have not offered any evidence that would suggest deliberate indifference to a serious medical need or that the medical staff and facility at SCIP is inadequate.

VII. Damages

The award of nominal damages has been approved where there has been no

showing of actual injury justifying the award of compensatory damages. Carey v. Piphus, 435 U.S. 247 (1978); Bradley v. Coughlin, 671 F.2d 686 (2d Cir. 1982).

In the instant case, there are some issues on which the plaintiffs have prevailed, and yet they have suffered no apparent injury. Accordingly, it is recommended that damages in the amount of $1.00 be awarded to the plaintiffs.

VIII. Proposed Findings of Fact

1. The plaintiffs, Stanton Story, George Brooks, Larry Howard, Louis McLemore and Robert Joyner, were incarcerated in the Restricted Housing Unit ("RHU") of the State Correctional Institution at Pittsburgh ("SCIP") in September, 1977.

2. Defendant William B. Robinson was the Commissioner of the Bureau of Corrections for the Commonwealth of Pennsylvania, at the time the suit was filed.

3. Defendant James Howard was the Superintendent of SCIP.

4. Defendant Robert Maroney and James Wigton were Deputy Superintendents of SCIP and were members of the Program Review Committee ("PRC").

5. Defendant Charles Zimmerman was the Superintendent of the State Correctional Institution at Huntingdon ("SCIH").

6. Defendant Charles Kozakiewicz was a correctional officer at SCIP holding the rank of Captain.

7. Defendants Lawrence Weyandt, E.J. Krall, Michael Ferris, Steven Mallinger, Officer Salvay, Officer Batisma, Sergeant Robeson and Captain Twyman were employees of SCIP.

8. On September 5, 1977 plaintiff Larry Howard was questioned by Defendant Kozakiewicz about gun powder, screws and pamphlets found in a locker in the

electric shop at SCIP.

9. On September 5, 1977 plaintiff Howard was removed from the general inmate population and placed on "J" Range, where he received a copy of the misconduct written against him.

10. The state police initiated an investigation concerning the items found in the locker in the electric shop.

11. On September 7, 1977 plaintiff Howard received a misconduct hearing at which time he presented a witness in his behalf.

12. Plaintiff Howard refused to submit his written version of the incident because of the pending state police investigation.

13. Plaintiff Howard was found guilty of the misconduct and sentenced to 180 days in the RHU.

14. Plaintiff Howard received a copy of the hearing committee's decision and

he was advised of his right to appeal that decision.

15. While plaintiff Howard was incarcerated in the RHU he received six monthly reviews by the PRC.

16. Plaintiff Howard requested a new hearing on the misconduct because he wanted to give his version of the incident provided the state police investigation was completed.

17. On February 6, 1978 a new misconduct hearing was convened but plaintiff Howard refused to submit his version of the incident because the members of the hearing committee did not know if the state police investigation had been completed.

18. Plaintiff Howard was afforded the rights enunciated in Wolff v. McDonnell, 418 U.S. 539 (1974).

19. On September 15, 1977, plaintiff Stanton Story was receiving a visit from

his family.

20. During this visit plaintiff Story excused himself to go to the men's room.

21. On the way to the men's room plaintiff Story was met by Defendant Officer Salvay who took him to the Major's Office.

22. At the Major's Office a number of correctional officers attempted to pry plaintiff Story's mouth open because it was believed that he was concealing contraband in his mouth.

23. Plaintiff Story refused to open his mouth and began butting the officers with his head, flailing his arms and kicking.

24. Reasonable force was used by the correctional officers to subdue plaintiff Story in an attempt to confiscate the contraband.

25. Contraband was recovered from plaintiff Story's mouth.

26. On September 15, 1977, plaintiff Story received a copy of a misconduct report charging him with possession of contraband and failing to comply with a direct order.

27. On September 19, 1977, Story received a misconduct hearing at which time he submitted his written version of the incident.

28. Defendant Major Wayandt chaired the misconduct hearing committee.

29. Plaintiff Story was permitted to call witnesses in his behalf but declined to do so.

30. On September 19, 1977, plaintiff Story was found guilty and sentenced to 180 days in the RHU.

31. Plaintiff Story received a copy of the written statement of the hearing committee and was advised of his right

to appeal its decision.

32. The correctional officers involved in the search of plaintiff Story used force to subdue the plaintiff, who was flailing his arms, butting with his head and kicking them.

33. The correctional officers involved in the use of force did not act with malicious or sadistic intent.

34. Defendant Weyandt was merely a witness to the search of plaintiff Story on September 15, 1977 and his membership on the hearing committee which conducted the misconduct hearing on plaintiff Story on September 19, 1977 does not violate plaintiff Story's rights.

35. Plaintiff Story has failed to prove that the defendants violated any right assured to him under the Constitution or the laws of the United States.

36. On August 6, 1976, plaintiff Robert Joyner was placed in the RHU under disciplinary custody maximum to serve a 180 day sentence for possession of implements of escape and attempted assault on a correctional officer.

37. After plaintiff Joyner completed the sentence he was maintained in the RHU but his status was changed from disciplinary custody maximum to administrative custody maximum.

38. Plaintiff Joyner did not receive a hearing of any kind prior to or at the time of his change in status.

39. During plaintiff Joyner's sixteen month incarceration in the RHU he received monthly reviews by the PRC.

40. Plaintiff Joyner also received a copy of the rationale of the PRC which stated generally that plaintiff Joyner was being maintained in the RHU as a security risk and that the PRC was

attempting to obtain a transfer for him to another correctional institution.

41. Plaintiff Joyner was maintained in the RHU in administrative custody in conformity with the federal requirements in existence at the time of his change in status.

42. On August 25, 1977, at 11:30 a.m., plaintiff Louis McLemore received a copy of a misconduct report charging him with possession of a broom handle and he was placed on "J" Range in investigative status.

43. On August 26, 1977 at 1:00 p.m., plaintiff McLemore received a misconduct hearing.

44. Misconduct hearings were held not less than 24 hours after no more than 6 days after an inmate has received a copy of the misconduct report.

45. Plaintiff McLemore has failed to prove that the defendants violated any

right assured to him under the Constitution or the laws of the United States as to his individual claims.

46. In September 1977 plaintiff George Brooks was an inmate at the Allegheny County Jail awaiting sentencing.

47. In September 1977 plaintiff Brooks was involved in an incident at the Allegheny County Jail in which he threatened jail staff with a homemade knife.

48. In September 1977 plaintiff Brooks was transferred from the Allegheny County Jail to the State Correctional Institution at Pittsburgh and upon arrival was placed in the RHU upon a determination by Lt. Higgins that he posed a security risk.

49. On September 19, 1977 plaintiff Brooks received a copy of a misconduct report concerning the events at the

Allegheny County Jail.

50. The correctional officers involved in the incident at the Allegheny County Jail were not present at the misconduct hearing conducted on September 21, 1977 at the State Correctional Institution at Pittsburgh.

51. Plaintiff Brooks' request that inmate Owens-El be present at his misconduct hearing was denied because inmate Owens-El was not present at the Allegheny County Jail when the incident occurred.

52. Plaintiff Brooks was found guilty of the misconduct and was sentenced to 180 days in the RHU.

53. The Court of Common Pleas of Allegheny County did not review plaintiff Brooks' transfer either before it occurred or within a reasonable time thereafter.

54. Plaintiff Brooks has failed to demonstrate a violation of any rights individually assured to him under the Constitution or laws of the United States.

55. The plaintiffs were provided with materials to clean their cells in the RHU.

56. Lighting was provided to the individual cells in the RHU by 60 Watt lightbulbs positioned in the corridor ceilings outside each RHU cell.

57. The ventilation system in the RHU provided an adequate supply of fresh air.

58. The sinks in the RHU cells furnished the plaintiffs with hot and cold running water.

59. Inmates in the RHU were provided with razors under strict supervision.

60. Restrictions on clothing were imposed on RHU inmates.

61. Meals were served to RHU inmates in their cells by RHU correctional officers.

62. The plaintiffs received a substitute food choice when pork was being served.

63. The plaintiffs were not permitted to go to the law library while they were housed in the RHU.

64. In 1977 there was no policy for the provision of law books to RHU inmates, but the library would provide specific information from the volumes requested.

65. RHU inmates could receive visits from 8:30 a.m. to 3:00 p.m.

66. RHU inmates were subjected to four strip searches during the visiting procedure--one strip search before they left the RHU for a visit, the second strip search when they arrived at the strip and search room to change into

visiting clothes, the third strip search in the strip and search room after the visit and the fourth strip search when they returned to the RHU.

67. A strip search is an observation of the naked body placed in a prone position.

68. Between the time an RHU inmate was strip searched in the RHU and the time he was strip searched in the strip and search room he was placed in restraints and did not come into contact with any other inmates.

69. Between the time an RHU inmate was strip searched in the strip and search room after a visit and the time he was strip searched back in the RHU he was placed in restraints and did not come into contact with any other inmates.

70. RHU inmates were permitted approximately fifteen to twenty minutes of exercise on weekdays only.

71. The Pennsylvania Statutes require that all inmates be provided at least two hours of physical exercise daily.

72. The plaintiffs, while housed in the RHU, were not permitted to attend religious services with the general prison population and religious services were not conducted in the RHU.

73. The plaintiffs were permitted to receive visits from their spiritual advisor during the day and these visits were conducted at their cell door.

74. Notary services were available to the plaintiffs every Wednesday so long as they had submitted a written request a week in advance.

75. The plaintiffs were not permitted to participate in educational programs with the general prison population and educational programs were not conducted in the RHU.

76. The administration at SCIP restricted the items the plaintiffs and other RHU inmates could purchase at the commissary based on security considerations.

77. SCIP employed two full-time doctors.

78. There were four psychiatrists, two doctors of psychology and three assistants providing psychiatric services at SCIP.

79. SCIP employed nurses who provide medical coverage for eighteen hours a day.

80. The plaintiffs have not demonstrated a denial of any required medical treatment.

IX. Proposed Conclusions of Law

1. This Court has jurisdiction over the subject matter of this action brought under the provisions of 42

U.S.C. § 1983 pursuant to the provisions of Section 1343 of Title 28, United States Code.

2. Plaintiff Howard was afforded the rights enunciated in Wolff v. McDonnell, supra.

3. Plaintiff Howard has failed to prove that the defendants violated any rights assured to him individually under the Constitution or laws of the United States.

4. An individual who has witnessed an event underlying a misconduct may be a member of the hearing committee on that misconduct so long as his involvement in the event was not direct or substantial.

5. Plaintiff Story has failed to prove that the defendants violated any right assumed to him, individually, under the Constitution or laws of the United States.

6. Plaintiff Joyner has failed to prove that the defendants violated any rights assured to him, individually, under the Constitution or laws of the United States.

7. Plaintiff McLemore has failed to prove that the defendants violated any rights assured to him, individually, under the Constitution or laws of the United States.

8. Plaintiff Brooks has failed to prove that the defendants violated any rights assured to him, individually, under the Constitution or laws of the United States.

9. The sanitation in the RHU is in conformity with existing requirements.

10. The lighting in the cells in the RHU must conform with minimal standards established by the State Health Department.

11. The ventilation in the RHU conforms with the standards established by the Department of Environmental Resources.

12. Within the parameters of institutional safety, the inmates in the RHU are provided with articles for personal hygiene.

13. Inmates in the RHU should be provided with laundry services similar to those enjoyed by other prison inmates.

14. Food service in the RHU must be in conformity with Bureau of Prison standards.

15. Inmates in the RHU are provided with adequate access to library materials within the needs of maintaining institutional security.

16. Visitation privileges of RHU inmates comports with minimal requirements.

17. The double strip searches of RHU inmates before and after visitation is unreasonable.

18. Inmates in the RHU must be permitted to enjoy minimal exercise privileges established by the Bureau of Prisons, with adequate safety precautions.

19. Limitations of exercise of RHU inmates to 15-20 minutes on weekdays is unconstitutional.

20. Inmates in the RHU enjoy a reasonable opportunity to exercise their religious beliefs in conformity with the necessity for maintaining institutional security.

21. Reasonable notary services are available to inmates in the RHU.

22. The denial of an opportunity to participate in institutional educational programs for RHU inmates is necessitated by

institutional security requirements.

23. Inmates in the RHU are not unreasonably barred from purchasing certain articles from the prison commissary.

24. The medical treatment provided for inmates in the RHU does not violate any constitutional standards.

25. Judgment should be entered against the plaintiffs and in favor of the defendants on all issues except those concerning strip searches and exercise privileges of inmates in the RHU, and on these issues damages in the amount of $1.00 should be awarded.

Respectfully submitted,

ROBERT C. MITCHELL
United States Magistrate

ıted: January 25, 1983

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